

**REMARKS**

Applicant thanks the Examiner and the Examiner's supervisor for the courtesies extended to Applicant's representative during the interview on October 9, 2008. During that interview, the rejections contained in the Office Action mailed on July 25, 2008, were discussed. The substance of the interview is incorporated into this response.

In the Office Action,<sup>1</sup> the Examiner rejected claims 1-7, 9, 10, 12-25, 27, 28, 30-35, 37, and 38 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,742,775 to King ("King") in view of U.S. Patent No. 5,878,404 to Stout, Jr. et al. ("Stout"), and further in view of U.S. Patent Application Publication No. 2005/0004860 to Pretell et al. ("Pretell"); and rejected claims 11 and 29 under 35 U.S.C. § 103(a) as being unpatentable over King in view of Stout, and further in view of Pretell and a publication titled "Annuities and Bond Discount" by R. J. Bennett ("Bennett").<sup>2</sup>

In this Reply, Applicants have amended claims 1, 22, 23, and 33. Claims 39-42 were previously withdrawn. Claims 1-7, 9-25, 27-35, 37, and 38 are currently are being examined.

Applicant respectfully traverses the rejection of claims 1-10, 12-28, and 30-38 under 35 U.S.C. § 103(a) as being unpatentable over King in view of Stout, and further in view of Pretell. A *prima facie* case of obviousness has not been established at least because the Office Action does not correctly ascertain the scope and content of the prior art, and the differences between the prior art and Applicant's claims are such that it

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<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of certain references and claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

<sup>2</sup> The Examiner's rejection cites to "NPL." (Office Action at 10.) Applicant assumes that "NPL" refers to Bennett, as cited in the Notice of References Cited attached to the Office Action mailed January 29, 2008.

would not have been obvious for one of ordinary skill in the art at the time of the invention to modify the prior art to arrive at Applicant's claimed invention.

Independent claim 1, for example, recites a computer-implemented method for controlling a system to provide a mortgage including receiving a fixed payment for the mortgage, the fixed payment being based on an initial interest rate serving as a maximum interest rate; qualifying, when a current interest rate has declined, a revised interest rate for an outstanding balance of the mortgage, the revised interest rate being lower than the maximum interest rate, wherein qualifying includes determining, using a processor, the revised interest rate and evaluating at least one of a loan to value ratio, an appraisal of a property, and a credit history; determining, when the current interest rate has increased and using the processor, the revised interest rate for the outstanding balance of the mortgage, wherein the revised interest rate does not exceed the maximum interest rate; determining a principal and interest amount based on the revised interest rate; determining a difference between the fixed payment and a sum of the principal and interest amount; and paying the mortgage based on the difference (emphasis added). None of King, Stout, and Pretell, taken individually or in combination, teaches or suggests the combination of features recited in claim 1.

During the Interview, the Examiner indicated that claim 1 was previously construed to not require that the claimed "qualifying" of a "revised interest rate" was for the same mortgage that was initially issued. Applicant amends claim 1 to clarify that the revised interest rate is qualified "for the outstanding balance of the mortgage," a "principal and interest amount" is determined "based on the revised interest rate," and the same mortgage is paid, without requiring a refinance to create a new mortgage.

The Examiner acknowledges that "King does not expressly disclose qualifying, wherein qualifying includes determining the revised interest rate . . ." (Office Action at 3). Stout fails to cure the deficiencies of King.

Stout discloses a "rate adjustment option module [that] resets the rate of interest on the principal balance in response to the debtor's election and with certain qualifying conditions." (Stout, Abstract). Stout discloses considering whether to provide a revised interest rate based on "the number of times the rate of interest is reset within the term of the loan, as well as the frequency of resetting the rate," and whether the debtor has made timely payments. (Stout, 6:1-31). However, the considerations of Stout fail to evaluate whether circumstances have changed regarding the property itself or the borrower. For example, implementing the system of Stout when property value rapidly declines would result in a borrower automatically being granted a revised lower interest rate without the lender realizing that the value of the home may no longer cover the mortgage. Without an evaluation of the "loan to value ratio" or an "appraisal of a property," as recited by claim 1, Stout fails to provide protection for a lender. And, without qualifying a revised interest rate based on a "loan to value ratio" and/or an "appraisal of a property," borrowers may continue to rely on a dropping interest rate to meet financial obligations, leading to the inability to sell a home due to excessive mortgage / home equity balance or even foreclosure. Accordingly, Stout fails to teach or suggest the claimed "qualifying . . . a revised interest rate" for an outstanding value of the mortgage, as recited by claim 1.

Pretell fails to cure the deficiencies of King and Stout. The Examiner alleges that Pretell discloses "qualifying . . . a revised interest rate" in Fig. 17B and paragraph 10.

(Office Action at 3-4). However, Fig. 17B of Pretell illustrates a selector “Apply 55” for a borrower to apply for a new loan to refinance an existing loan. Applying for a new loan to refinance an existing mortgage leads to closing costs for a borrower, as illustrated in Fig. 17B of Pretell. In contrast, as clarified by this amendment, claim 1 requires qualifying a “revised interest rate for the outstanding balance of the mortgage,” determining a “principal and interest amount based on the revised interest rate,” and paying the same mortgage, without requiring a refinance to create a new mortgage or the associated closing costs.

The claimed combination of qualifying a revised interest rate, including evaluating the loan-to-value ratio and a property appraisal for the *same* mortgage both provides security for a lender and prevents a borrower from having to pay closing costs as compared to refinancing with a new mortgage. (See, e.g., Applicants' Specification at paragraph 018.) The claimed combination would not have been obvious to one of ordinary skill in the art without the benefit of reading Applicant's claims, as demonstrated at least by the absence of any such teaching in King, Stout, and Pretell, whether taken individually or in combination.

Because none of King, Stout, and Pretell, taken individually or in combination, teaches or suggests the combination of features recited by claim 1, the Office Action does not properly ascertain the scope and content of the prior art nor properly ascertain the differences between the prior art and the claimed invention. Accordingly, no *prima facie* case of obviousness has been established for claim 1. Independent claims 22, 23, and 33, although of different scope than claim 1, patentably distinguish from King, Stout, and Pretell for at least the same reasons as claim 1. Claims 2-7, 9, 10, 12-22, 24, 25,

27, 28, 30-32, 34, 35, 37, and 38 depend from independent claims 1, 23, or 33, and therefore include all of the features recited therein. Accordingly, claims 2-7, 9, 10, 12-22, 24, 25, 27, 28, 30-32, 34, 35, 37, and 38 patentably distinguish from King, Stout, and Pretell for at least the same reasons as those stated above with respect to claims 1, 23, and 33. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of pending claims 1-7, 9, 10, 12-25, 27, 28, 30-35, and 37-38 under § 103(a) as being unpatentable over King in view of Stout, and further in view of Pretell.

Applicant respectfully traverses the rejection of claims 11 and 29 under 35 U.S.C. § 103(a) as being unpatentable over King in view of Stout, and further in view of Pretell and Bennett. Claims 11 and 29 depend from independent claims 1 and 23 and therefore include all of the features recited therein. Bennett fails to cure the deficiencies of King, Stout, and Pretell discussed above with respect to claims 11 and 29, nor does the Examiner rely on Bennett for such teachings.

Accordingly, because the cited references, taken individually or in combination, fail to teach or suggest the combination of features required by claims 11 and 29, the Office Action does not properly ascertain the scope and content of the prior art nor properly ascertain the differences between the prior art and the claimed invention. Accordingly, no *prima facie* case of obviousness has been established for claims 11 and 29. Applicant therefore respectfully requests the Examiner to reconsider and withdraw the rejection of claims 11 and 29 under § 103(a).

In view of the foregoing, Applicant requests the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge  
any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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Dated: December 22, 2008

/Nathan A. Sloan/

By: \_\_\_\_\_

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